IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

APPLICANT :	Namon A. Nassef	)	ART UNIT: 3643
SERIAL NO.:	10/603,336	)	EXAMINER: Kurt C. Rowan
FILED :	06/26/03	)	

THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS

Washington, DC 20231

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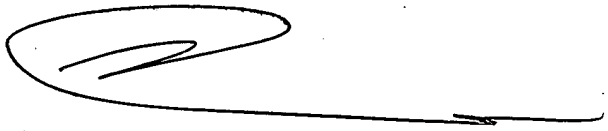
1. Applicant's Appeal Brief - 13 sheets including the cover sheet, 3 copies
2. Filing Fee in the Amount of $250.00 to cover item 1.

Respectfully submitted,



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CERTIFICATE OF MAILING

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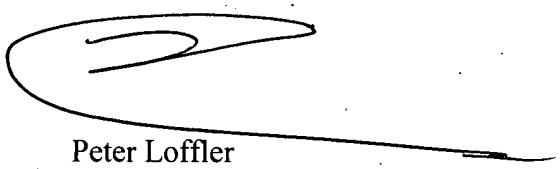

Peter Loffler

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APPLICANT'S INITIAL APPEAL BRIEF

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1. REAL PARTY IN INTEREST

Applicant, Namon A. Nassef, is the real party in interest in this appeal

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to applicant which will directly affect or be directly affected by or have a bearing on the Board's decision in the instant appeal.

3. STATUS OF CLAIMS

Claims 1-18 have been presented and all claims 1-18 stand rejected.

4. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

5. SUMMARY OF THE INVENTION

The invention is a chummer for chopping up fish bait (bait fish, synthetic bait, or other types of meat, etc.,) to be deposited into the water for chumming the water in order to attract fish to be caught. The chummer has a housing with a removable top cap, a bottom cap, and an upper-end-located opening for receiving bait, page 7, lines 2-11, 16-18, figure 1. An inlet port and an outlet port are each located toward the bottom of the housing with the outlet port being below the inlet port, page 7, lines 12-16, figure 1. A

reversible motor is attached to the housing and has a shaft axially extend through the housing, the shaft received within an appropriate bearing assembly, page 7, line 19 – page 8, line 2, figure 1. A pair of cutting blades are attached along a length of the shaft, page 8, lines 2-5, figure 1. An impeller blade is attached to the shaft below the lowermost cutting blade and between the inlet port and the outlet port, page 8, lines 5-7, figure 1. A mounting bracket is attached to the housing for mounting the housing on an appropriate location of a boat such as onto the gunwale, page 8, lines 8-18, figure 1.

The housing is assembled by mounting the desired number and types (coarse chop, fine chop, etc.,), of blades onto the shaft using appropriate spacers as needed and then mounting the housing on the boat such that both the inlet port and the outlet port of the housing are below the water line page 8, line 19 – page 9, line 21. The motor is activated in order to rotate the shaft and the attached cutting blades and the impeller blade page 9, lines 21-25. Bait is fed into the housing through the opening wherein the bait gravitationally falls onto the cutting blades which cutting blades chop the bait up page 9, line 25 – page 10 line 3. Simultaneously, the impeller blades draws water into the housing through the inlet port wherein the water mixes with the bait that has been chopped up by the cutting blades. The water and chum mixture is dispelled, via the action of the impeller blade, through the outlet port, page 10, lines 3-10. If the device becomes clogged, the motor is reversed in order to back flush the device, page 10, lines 10-15.

6. ISSUES ON APPEAL

The issues on appeal are whether claims 1-3, 7-11, and 15-18 are unpatentable under 35 U.S.C. 103(a) over Spinelli (6,581,322) in view of Wentzell (5,720,124), and whether claims 4-6, and 12-14 are unpatentable under 35 U.S.C. 103(a) over Spinelli (6,581,322) in view of Wentzell (5,720,124) in further view of Stanish et al., (4,685,242).

7. ARGUMENTS

(i): None

(ii): None

(iii):

Applicant invented his device in order to provide a chummer that automatically chops and expels bait with minimal interaction by the user and that can be easily cleaned or unclogged by back flushing the device as needed. The prior art, neither singularly nor in combination, shows such a device as claimed by applicant. Applicant's arguments are directed specifically at claims 1 and 9, the two independent claims.

The Spinelli invention is an automatic chummer that has a scything cutting means 35 which cuts the chum bait and also drives the chum bait against filtering means 33 for grinding the chum bait and against shearing cutting means or horizontal blade 36 for cutting residual chum bait retained by the filtering means 33, Abstract. Filtering means 33 is a flat disk member that has a series of openings 33b located thereon, column 3, lines 11-17, figures 2, 4a-4c, 6b. A counter-blade 34 is located below filtering means 33, column 3, lines 11-17, figure 6c. The various blades 33, 34 35, and 36 are mounted on a rotating shaft driven by a motor, which may be a low power motor, for example a variable speed 5 watt motor, column 2, lines 37-45, figures 2, 6b, 6c. The scything cutting blade 35 and the horizontal blade 36 are a double blade helix and are formed integrally by stamping a flat configuration, column 3, lines 17-32, figure 3a, with the horizontal blade 36 being disposed in a horizontal plane and the scything cutting blade 35 being inclined with respect to the horizontal blade 36 about 15 degrees above the horizontal blade 36, column 3, lines 11-40. The Spinelli device is designed to be located above the water line, column 2, lines 21-23.

The Wentzell et al., (hereafter Wentzell) is a manual chummer wherein blades are mounted a shaft whereby shaft rotation is achieved by manually plunging and pulling a

handle attached to the shaft. The device is immersed in the water during bait grinding operation, Abstract, figures 1-4.

The Examiner argues that it is obvious to modify the Spinelli invention with the teachings of the Wentzell patent in order to arrive at applicant's claims 1 and 9. The Examiner states that the Spinelli device discloses a housing with an inlet port 33b and an outlet port 33b, an opening 12 for receiving bait, a top cap 42, 43 and bottom caps 60, a motor 40 that drives a shaft 31, a cutting blade 35 attached to the shaft and an impeller blade 36 attached to the shaft. The Examiner modifies the Spinelli device with the Wentzell disclosure by placing the inlet and outlet ports below the water line as taught by the Wentzell device's below water perforations. The Examiner further modifies the Spinelli device by moving the impeller blade 36 between the inlet port and the outlet port arguing that is a rearrangement of parts and is, therefore, an obvious variation. This argument fails for many reasons.

First, and assuming *arguendo*, that the modification of the Spinelli device with the teachings of the Wentzell patent arrives at applicant's claimed invention, which will be shown *infra*, that such is not the case, there is no suggestion or motivation for combing the teachings of the Spinelli invention with the teachings of the Wentzell patent. The Examiner argues that the motivation for so combining the teachings is to provide a more homogenous mix of the chum since the addition of water will dilute the chum and therefore make the chum more homogenous and that the motivation is found in the knowledge generally available to one or ordinary skill in the art. In the first place, mixing chum with water does not result in more homogenous chum, but rather merely in a more diluted chum. For example, if a bait sardine is dropped into the chummer and is ground into three pieces, the head, the tail, and the body, comprising the three pieces, adding water to this chum will not make the chum any more homogenous, you will still have a head piece, a tail piece, and a body piece, now more diluted for the volume of space which they occupy. The argument is the same, if the chum is ground to a finer

granularity. Greater homogeneity is achieved by making a finer grind of the chum bait not by adding water. However, even if we assume that mixing the chum with water does result in a more homogenous chum, how is this important in any fashion. Fisherman are concerned with two aspects of their chum, the type of bait being chummed and the size of the chum. Each of these are important for the type of fish for which the fisherman are fishing. Homogeneity of the chum achieves no useful results. The fish are not particularly picky eaters and they do not consult restaurant guides prior to seeking chum, the fish are simply concerned that the chum is of the type they eat and of a size appropriate for that type of fish. The fish do not care if the chum is homogenous or not. Additionally, if mixing the chum with water at the lower level of the housing does in fact make the chum more homogenous, then dropping the chum directly into the water being fished will even further increase the homogeneity of the chum. If dropping chum into the Gulf of Mexico, for example, creates a highly homogenous chum, just what is the purpose of creating a mid-level homogenous chum within the body of the chummer, an area where the fish being targeted by the fishermen will not ordinarily be found, the fish approach the chum after it has been expelled from the chummer. Accordingly, the Examiner is attempting to arrive at a solution for which no problem exists and even so does not obtain a more homogenous chum, just a more diluted chum. Therefore, there is no motivation to combine the Spinelli device with the teachings of the Wentzell patent and applicant's device is non-obvious with respect to the prior art. There is no objective reason to combine the teachings of the references, which is required. Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

Even if motivation does exist for combining the Spinelli device with the teachings of the Wentzell patent, the proposed combination fails to disclose or suggest applicant's claimed invention. Applicant's invention claims an impeller blade located between the inlet port and the outlet port and below the first cutting blade. The Spinelli device lacks an impeller blade. The Examiner cites blade 36 as being the impeller blade, but this is

just not so. Blade 36 is designed to shear the chum bait that is cut by blade 35 and that is held back by the openings 33b of filtering blade 33. The blade 36 is disposed in a horizontal plane and is in fact referred to as "horizontal blade", column 4, lines 45, 55, 62-63, column 5, line34, 38, claim 5. An impeller blade is designed to drive a fluid under pressure. This is not the function of horizontal blade 36 as it is designed to be a shear blade that shears chum that gets caught in the openings 33b of filtering means 33. The Examiner argues that since horizontal blade 36 rotates, and when modified by the teachings of the Wentzell device, rotates within the water and thus causes turbulence between the inlet port and the outlet port. "Claims must be given their broadest reasonable interpretation consistent with the specification." MPEP 2111, and claims must be given their "plain meaning" unless they are defined in the specification. MPEP 2111.01. Applicant has claimed the plain meaning of an impeller blade which moves fluid under pressure, a well-defined term. The fact that the horizontal blade 36 causes turbulence with the water does not transform the blade to an impeller blade, otherwise, virtually anything in the water – a shark or a cannon ball shot into the water – can be defined as an impeller blade, which simply goes against common sense. Accordingly, modifying the Spinelli device with the teachings of the Wentzell patent, fails to disclose or suggest applicant's claimed invention.

Additionally, the Examiner has defined openings 33b as the inlet port as well as the outlet port. How is the "impeller blade" 36 going to move water into one of these openings and out the other, the "impeller blade" 36 cannot. Furthermore, if the modification is made as stated by the Examiner, then the horizontal blade 36, acting as the impeller blade, is below the water as is the filtering means 33 and the counter-blade 34, and cutting blade 35 is also underwater, unless the device is extremely precisely positioned and the water level, through boat movement or wave action, does not change. Automatic chummers such as that disclosed by Spinelli as well as by applicant rely on gravity to feed the bait through the cutting blades. If the cutting blades are underwater, as

would be necessary if the proposed modification is made, then at least a substantial portion of the gravitational forces are reduced due to the buoyancy effects of the water on the bait. Many types of chum will float instead of being gravitationally pressed through the cutting blades rendering the device effectively inoperable. Therefore, modifying the Spinelli device with the teachings of the Wentzell patent renders the Spinelli device inoperative and is therefore not permitted. MPEP 2143.01.

Lastly, the Examiner argues that placing the impeller blade between the inlet port and the outlet port is an obvious variation since rearrangement of the location of parts has been held to be obvious. The Examiner provides that openings 33b on filtering means 33 are both the inlet port and the outlet port. Exactly how an impeller blade will be located between two openings on the same flat disk-shaped member 33 is not understood and is not possible within the Spinelli chummer.

Accordingly, Applicant respectfully requests that the determination by the Examiner that claims 1-18 are not patentable for the reasons given by the Examiner be reversed in total.

APPENDIX

Claim 1.

A chummer comprising:

a housing having an inlet port, an outlet port, and an opening for receiving bait;

a motor attached to the housing, the motor having a shaft axially extending through the housing;

a first cutting blade attached to the shaft;

an impeller blade attached to the shaft and located between the inlet port and the outlet port and below the first cutting blade, wherein rotation of the shaft causes rotation of the impeller blade which causes water to be drawn into the housing through the inlet port and discharged through the outlet port whenever the outlet port is positioned below the water line; and

wherein the housing is placed into the water so that the inlet port and the outlet port are beneath the water line, the bait is placed into the opening, and the motor is activated and rotates the shaft such that bait falls through the housing and is cut up by the first cutting blade and the impeller blade draws water through the inlet port into the housing wherein the water is mixed with the cut up bait and the mixed water and cut up bait are expelled through the outlet port.

Claim 2.

The chummer as in claim 1 wherein the motor is an electric motor.

Claim 3.

The chummer as in claim 1 wherein the motor is reversible such that the rotation of the shaft is reversible.

Claim 4.

The chummer as in claim 1 further comprising a second blade attached to the shaft between the first cutting blade and the impeller blade.

Claim 5.

The chummer as in claim 4 wherein the distance between the first cutting blade and the second cutting blade is changeable.

Claim 6.

The chummer as in claim 4 further comprising a spacer disposed between the first cutting blade and the second cutting blade.

Claim 7.

The chummer as in claim 1 further comprising a mounting bracket attached to the housing.

Claim 8.

The chummer as in claim 7 wherein the mounting bracket is pivotally attached to the housing.

Claim 9.

A chummer comprising:

a housing having a top cap, a bottom cap, an inlet port, an outlet port, and an opening for receiving bait;

a motor attached to the top cap of the housing, the motor having a shaft axially extending through the housing;

a first cutting blade attached to the shaft;

an impeller blade attached to the shaft and located between the inlet port and the outlet port and below the first cutting blade , wherein rotation of the shaft causes rotation of the impeller blade which causes water to be drawn into the housing through the inlet port and discharged through the outlet port whenever the outlet port is positioned below the water line; and

wherein the housing is placed into the water so that the inlet port and the outlet port are beneath the water line, the bait is placed into the opening, and the motor is activated and rotates the shaft such that bait falls through the housing and is cut up by the first cutting blade and the impeller blade draws water through the inlet port into the housing wherein the water is mixed with the cut up bait and the mixed water and cut up bait are expelled through the outlet port.

Claim 10.

The chummer as in claim 9 wherein the motor is an electric motor.

Claim 11.

The chummer as in claim 9 wherein the motor is reversible such that the rotation of the shaft is reversible.

Claim 12.

The chummer as in claim 9 further comprising a second blade attached to the shaft between the first cutting blade and the impeller blade.

Claim 13.

The chummer as in claim 12 wherein the distance between the first cutting blade and the second cutting blade is changeable.

Claim 14.

The chummer as in claim 12 further comprising a spacer disposed between the first cutting blade and the second cutting blade.

Claim 15.

The chummer as in claim 9 further comprising a mounting bracket attached to the housing.

Claim 16.

The chummer as in claim 15 wherein the mounting bracket is pivotally attached to the housing.

Claim 17.

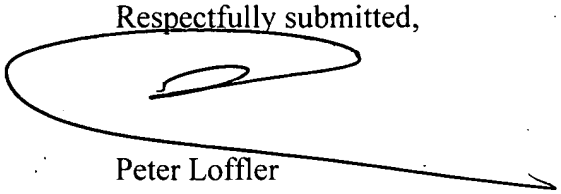
The chummer as in claim 9 wherein an end of the shaft is received within a bearing assembly attached to the bottom cap.

Claim 18.

The chummer as in claim 9 wherein the bottom cap is removably attached to the housing.

This Appeal Brief and the accompanying fees being respectfully submitted this 31st day of May, 2005.

Respectfully submitted,



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